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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** JW Associates Inc.

**File:** B-275209.3

**Date:** July 22, 1997

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Brad Piehl for the protester.

Gary C. Rynearson for Natural Resources Management Corporation, an intervenor.

Allen W. Smith, Department of Agriculture, Forest Service, for the agency.

Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Contracting agency's reevaluation of technical proposals--pursuant to General Accounting Office recommendation in prior decision to do so--is reasonable where the record shows that the evaluation was consistent with the evaluation criteria established in the solicitation; protester's mere disagreement with the agency's conclusions does not render the reevaluation unreasonable.

2. Where contracting agency reevaluates proposals pursuant to a General Accounting Office recommendation after contract has been awarded, contracting officials may properly consider awardee's performance on contract in period between award and reevaluation where request for proposals incorporated prior experience and contract performance into evaluation factors.

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## DECISION

JW Associates Inc. protests the award decision of the Forest Service under request for proposals (RFP) No. RM-96-37 following the Forest Service's reevaluation of proposals under that solicitation. JW had earlier protested the Forest Service's award of a contract to Natural Resources Management Corporation (NRMC) under this RFP. In JW Assocs. Inc., B-275209, Jan. 30, 1997, 97-1 CPD ¶ 57, we sustained JW's protest because we concluded that the Forest Service's technical evaluation and award decision were not adequately supported, and we recommended that the Forest Service reevaluate the proposals, conducting discussions and requesting best and final offers, if necessary. The Forest Service reevaluated and affirmed its original determination that NRMC's offer represented the best value to the government. JW now challenges various aspects of the Forest Service's reevaluation and the subsequent award decision. We deny the protest.

The RFP sought offers for services to complete an environmental impact statement for the Cold Springs Analysis Area on the Medicine Bow National Forest in Wyoming. The RFP provided detailed instructions in section L establishing the format for proposals and describing the type of information that should be provided under each criterion, and advised offerors to include their most favorable terms in their initial proposals because of the possibility that award could be made without further negotiations. The RFP at M3 listed the following five evaluation criteria in descending order of importance: qualifications of the firm; qualifications of the personnel assigned to the project; past experience of the firm and its employees assigned to the project; geographic location; and price. The RFP characterized the first three criteria as "very important" and the remaining two as "important," and stated that award would be made to "that offeror (1) whose proposal is technically acceptable and (2) whose technical/cost relationship is the most advantageous to the Government."

Nine firms, including JW and NRMC, submitted proposals. A three-member evaluation board reviewed and scored the proposals. The board prepared a "Memorandum for Record" that consisted of a one-paragraph narrative summary of each proposal's evaluation. The contracting officer concluded that NRMC's proposal was most advantageous to the government, and awarded the contract to that firm. After receiving a written debriefing, JW filed a protest in our Office, alleging that the Forest Service's evaluation of proposals was inconsistent with the terms established in the RFP, and that the awardee's proposal did not conform with the RFP's requirements. Although the agency initially stayed the performance of the contract pending resolution of the protest, as required under 31 U.S.C. § 3553 (1994), the head of the contracting activity later approved a request by the forest supervisor to override the stay and proceed with performance.

We sustained JW's protest, based on our conclusion that the Forest Service had failed to support its technical evaluation in any meaningful way. We also pointed out that the record suggests that the source selection decision was based primarily on price, in spite of the fact that this factor was the least important one under the evaluation scheme established by the RFP.

In response to our recommendations, the Forest Service reconvened its three-member evaluation board and reevaluated the proposals. Each board member independently evaluated each technical proposal, using a form on which narrative comments and numerical scores were recorded. Using a 100-point scale, the evaluators could assign a maximum of 26 points for each of the first three evaluation factors and a maximum of 11 points for each of the remaining two factors. After the individual evaluations were completed, the board members discussed the evaluations, calculated the average point values assigned to each evaluation factor and the average point scores overall, and ranked the proposals according to their relative standing. The contracting officer reviewed the price proposals for compliance with the RFP's terms and ranked them by price.

Under the reevaluation of technical and business (price) proposals, NRMC's proposal received the highest overall score, while JW's proposal was given the fourth highest score. Although JW's technical proposal was scored nearly as high as NRMC's proposal, NRMC's price was significantly lower than JW's price. The contracting officer again concluded that NRMC's proposal was the most advantageous to the government, and determined that the firm's contract should not be disturbed. After the contracting officer informed the remaining offerors of this decision, JW requested and received a written debriefing. This protest followed.

JW protests that NRMC's proposal was not technically acceptable, alleging that NRMC's proposal did not conform with the proposal format and content requirements established in section L.9 of the RFP; and that the agency's technical evaluation was unreasonable because NRMC's technical proposal could not reasonably receive a higher score than JW's own proposal.<sup>1</sup>

JW initially alleges that NRMC failed to include sufficient detail to explain its technical approach for many of the tasks required for completion of the environmental impact statement. Instructions in section L of the RFP state that a "detailed work plan must be submitted indicating how each aspect of the statement of work is to be accomplished. The technical approach should be in as much detail as the offeror considers necessary to fully explain the proposed technical approach or method." JW contends that NRMC's proposal does not meet this standard because "it does not identify its technical approach for most technical areas."

Here, the standard established in the RFP included a certain subjective latitude, instructing offerors in essence to use their business judgment to determine how much information was necessary to describe and explain the approach they planned to use. We note, in this regard, that information requirements provided in section L of an RFP are not the same as evaluation criteria established in section M; rather than establishing minimum acceptability standards, the instructions generally provide guidance intended to assist offerors in preparing effective proposals. In section M, the RFP stated that "[p]roposals shall be prepared in accordance with the preparation instructions listed in Section L and above and will be evaluated and ranked on the basis of the following criteria . . . ." Although section L required certain information to be included in the RFP, the evaluation criteria listed in section M do not directly correspond with those requirements. For example, although offerors were instructed to provide a detailed work plan, there was no "work plan" or "technical approach" evaluation criterion. Section L, reasonably read with section M, required offerors to provide sufficiently detailed information to

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<sup>1</sup>JW initially also protested that the relative weight given to each of the evaluation criteria was inconsistent with the evaluation scheme that was announced in the RFP; however, in its comments on the agency report, this basis of protest was withdrawn.

permit the agency to determine how each offeror's proposal satisfied each technical criterion. For example, under the "qualifications of the firm" criterion, offerors were to provide information related to the firm's specialized experience and competence related to this project and to address the firm's ability to accomplish the work within the period set forth in the specifications. Under the RFP, it was left to the offeror to determine the information necessary to persuade the agency that it met this criterion.

Although NRMC may not have included the same level of detail in certain technical areas that JW included in its proposal, this does not lead to the conclusion that NRMC's proposal was technically unacceptable. The evaluation narratives in the record show that the evaluators considered the information in NRMC's proposal adequate to demonstrate the firm's understanding of the requirement. For example, although JW alleges that NRMC's proposal failed to satisfy section L's requirement for a list of names and proposed duties of the professional personnel, consultants, and key subcontractor employees assigned to the project and the proposed staff hours for each of these individuals, allocated against each task or subtask, our review of the awardee's proposal shows that this information was, in fact, provided.

JW also protests that the evaluation was improper, alleging that NRMC's proposal could not reasonably have received a higher technical score than JW's. JW compares aspects of the two proposals and uses particular examples to support its assertion of JW's superior proposal, such as the education or experience of its proposed personnel, the firm's past experience and the firm's geographic location.

The determination of the relative merits of proposals is primarily a matter of agency discretion, which we will not disturb unless it is shown to be without a reasonable basis or inconsistent with the evaluation criteria listed in the RFP. Pemco Aeroplex Inc., B-239672.5, Apr. 12, 1991, 91-1 CPD ¶ 367 at 4. Based on our review of the two firms' proposals, we think it is apparent that the proposals represent differing approaches to the work; based on our review of the evaluation record, it is apparent that agency reasonably concluded that NRMC's approach would satisfy its needs. While JW argues that the level of effort that NRMC proposed for certain tasks was insufficient, and while NRMC has proposed to complete certain tasks in fewer hours than JW proposed, these arguments alone do not invalidate the evaluators' opinion concerning the NRMC proposal or establish that NRMC's proposal was technically unacceptable. Similarly, the fact that NRMC's approach may have been less rigorous and less expensive than JW's does not necessarily mean, as JW suggests, that it was unacceptable or even inferior; in the agency's judgment, it considered JW's proposed approach excessive in certain respects. For example, the evaluation board believed that JW may have overestimated the number of management and staff hours needed to complete certain tasks. Such an assessment was consistent with the RFP, which, in describing the basis for award, expressly stated that award would "not necessarily be made for technical

capabilities that would appear to exceed those needed for fulfilling the requirements of this contract."

The evaluation record shows that for the criterion of "Qualifications of the firm," the evaluators gave JW a slightly lower score than NRMC. However, the narrative portions of the score sheets do not indicate that the reevaluation was arbitrary or capricious, as the protester suggests, but rather, that the evaluators considered the information contained in the two proposals and, based on that information, valued NRMC's qualifications more highly. For example, one evaluator noted the firm's size and long record of expertise in related (although not identical) projects, and valued the firm's experience and skills in areas such as silviculture, timber sale, and roads/transportation design. Regarding the qualifications of personnel assigned to the project, the evaluators noted such factors as the level of documented education, certification, and experience when scoring NRMC's proposal.

While JW has provided, in some instances, a person-by-person comparison to illustrate its general assertion that its own proposal should have received a higher score in this area, its arguments do not persuade us that the agency's evaluation conclusions were unreasonable or inconsistent with the terms of the RFP. For example, in comparing persons proposed to work on silviculture-related tasks, JW argues that JW's employee "may not have the number of years of experience that [NRMC's employee] does; however, she does have a more advanced degree and recent experience that is nearly identical to that required for this project." Here, and in many other similar examples that JW raises, we think JW's objection to the evaluation represents mere disagreement with the evaluators' opinions regarding the relative merits of the two proposals. In another example, JW asserts that NRMC should have received a lower score for its proposed personnel because no technical writer is proposed. Acknowledging that the RFP did not require the use of a technical writer, JW nonetheless asserts that "[t]his task is best completed by a technical writer," and concludes that its own proposal therefore should have been more highly scored than NRMC's in this area. Similarly, JW refers repeatedly to its own experience completing an environmental impact statement; however, while the RFP required offerors to demonstrate their qualifications to perform this work, the RFP did not require this specific experience. Thus, the evaluators could reasonably conclude that NRMC's extensive experience in more than a dozen relevant disciplines demonstrated appropriate qualifications, while also concluding that JW, which had the specific experience of performing environmental impact studies, was weak because of a lack of extensive forest health and silviculture experience. In short, we find adequate support in the record for the evaluation conclusions.

JW also challenges the evaluation based on its allegation that the evaluators were biased toward NRMC as a result of NRMC's performance of the contract during the pendency of the protest. Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of

inference or supposition. Ameriko Maintenance Co., B-253274, B-253274.2, Aug. 25, 1993, 93-2 CPD ¶ 121 at 5. Thus, where a protester alleges bias on the part of government officials, the protester must provide credible evidence clearly demonstrating a bias against the protester or for the awardee and that the agency's bias translated into action that unfairly affected the protester's competitive position. Advanced Sciences, Inc., B-259569.3, July 3, 1995, 95-2 CPD ¶ 52 at 17.

Here, where the agency was reevaluating proposals pursuant to a GAO recommendation and the RFP evaluation scheme sets forth prior experience and contract performance as evaluation factors, it was not improper for the agency to take into account performance by the awardee under a major, ongoing contract. Consideration of the awardee's performance thus did not demonstrate bias, nor do we find other evidence in the record to support an allegation of bias.

The protest is denied.

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of the United States